

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DIANNE L. KELLEY and KENNETH  
HANSEN,

Plaintiffs,

v.

MICROSOFT CORPORATION, a Washington  
Corporation,

Defendant.

NO. C07-0475 MJP

STIPULATION AND [PROPOSED]  
ORDER DISMISSING CONTRACT  
CAUSE OF ACTION

CLASS ACTION

**STIPULATION**

Pending before this Court is Microsoft's motion to dismiss. In regard to Plaintiffs' common law breach of contract claim, Microsoft represents in its reply brief that the version of the XP End User License Agreement (EULA) attached to the Thomas Declaration (Dkt. 18, Ex. A) is not the version of the XP EULA that would have been provided with Plaintiffs' computers (Dkt. 20 at 6). Based upon that representation, the parties hereby stipulate that Plaintiffs' breach of contract claim may be dismissed, without prejudice. This Stipulation relates only to Plaintiffs' breach of contract claim.

STIPULATION AND [PROPOSED] ORDER DISMISSING  
BREACH OF CONTRACT CAUSE OF ACTION - 1  
No. C07-0475 MJP

**GORDON TILDEN THOMAS & CORDELL LLP**  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154  
Phone (206) 467-6477  
Fax (206) 467-6292

DATED this 3<sup>rd</sup> day of August, 2007.

**GORDON TILDEN THOMAS &  
CORDELL LLP**

By 

Jeffrey I. Tilden, WSBA #12219  
Jeffrey M. Thomas, WSBA #21175  
Michael Rosenberger, WSBA #17730  
Mark A. Wilner, WSBA #31550

**KELLER ROHRBACK L.L.P.**

By 

William C. Smart, WSBA #8192  
Ian S. Birk, WSBA #31431

Attorneys for Plaintiffs

**DAVIS WRIGHT TREMAINE LLP**

By 

Stephen M. Rummage, WSBA #11168  
Cassandra L. Kinkead, WSBA #22845  
Charles S. Wright, WSBA #31940

(per telephone authentication)

**MONTGOMERY, MCCrackEN,  
WALKER & RHOADS, LLP**

By 

Charles B. Casper

(per telephone authentication)

Attorneys for Defendant

**ORDER**

Based upon the above stipulation, Plaintiffs' common law breach of contract claim is dismissed, without prejudice.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
MARSHA J. PECHMAN  
UNITED STATES DISTRICT JUDGE

STIPULATION AND [PROPOSED] ORDER DISMISSING  
BREACH OF CONTRACT CAUSE OF ACTION - 2  
No. C07-0475 MJP

**GORDON TILDEN THOMAS & CORDELL LLP**  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154  
Phone (206) 467-6477  
Fax (206) 467-6292

**CERTIFICATE OF SERVICE**

I hereby certify that on August 3, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following.

Counsel for Defendant Microsoft Corporation

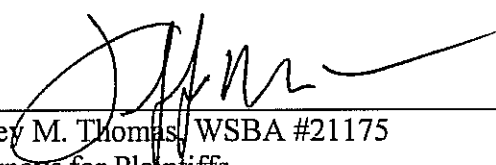
Stephen M. Rummage, WSBA #11168  
Cassandra L. Kinkead, WSBA #22845  
Charles S. Wright, WSBA #31940  
Davis Wright Tremaine LLP  
1201 Third Avenue Suite 2200  
Seattle, Washington 98101-3045  
[steверummage@dwt.com](mailto:steверummage@dwt.com)  
[cassandrakinkead@dwt.com](mailto:cassandrakinkead@dwt.com)  
[charleswright@dwt.com](mailto:charleswright@dwt.com)

Counsel for Defendant Microsoft Corporation  
- Admitted Pro Hac Vice

Charles B. Casper  
Montgomery, McCracken, Walker & Rhoads  
123 South Broad Street  
Philadelphia, PA 19109  
[ccasper@mmwr.com](mailto:ccasper@mmwr.com)

**GORDON TILDEN THOMAS & CORDELL LLP**

By

  
Jeffrey M. Thomas, WSBA #21175  
Attorneys for Plaintiffs  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154-1007  
Telephone: (206) 467-6477  
Facsimile: (206) 467-6292  
Email: [jthomas@gordontilden.com](mailto:jthomas@gordontilden.com)